

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	
)	ORDER DENYING DEFENDANT’S
vs.)	APPEAL
)	
Lana Pederson,)	Case No. 1:06-cr-026-02
)	
Defendant.)	

Before the Court is the Defendant Lana Pederson’s “Notice of Appeal to U.S. District Court of Order Revoking Defendant’s Pre-Sentence Release Entered by United States Magistrate Charles S. Miller, Jr.” filed on August 30, 2006.

On August 21, 2006, Magistrate Judge Charles S. Miller Jr., conducted a hearing on a Petition for Revocation of Pre-Sentence Release. The underlying petition alleges that the Defendant had tested positive for methamphetamine in violation of her conditions of release. Magistrate Judge Miller revoked the Defendant’s pre-sentence release. In the Order issued on August 21, 2006, revoking the Defendant’s pre-sentence release the following finding was made:

United States Probation and Pretrial Services Officers Tim Kramer and Patrick Schmidt testified as to the matter in which the sample was collected, the initial screening indicating that presence of methamphetamine, and confirmation of the positive test result by a contract lab. The court finds their testimony to be credible. Although they may have deviated slightly from their officer’s written procedures regarding the packaging of the defendant’s sample for mailing, the court found there was substantial compliance with procedure and that the pretrial services office took reasonable steps to ensure that the sample was not corrupted. As an aside, it should be noted that the pretrial services office packaged the sample in the defendant’s presence.

The defendant has a history of methamphetamine use. She has entered a guilty plea to the underlying offense – conspiracy to possess and distribute marijuana, 500 plus grams of a mixture containing detectable amounts of a methamphetamine, and a mixture containing detectable amounts of cocaine – and is awaiting sentencing. In light of her history of substance abuse and given that the initial and subsequent lab results were positive for the presence of

methamphetamine, the court finds that the defendant did violate the terms and conditions of her pre-sentence release.

See Docket No. 120.

The Defendant asserts that the drug test report offered by the Government should not have been admitted and that the Magistrate Judge failed to address the Defendant's request for an independent test of the urine sample. The Government has argued that the Federal Rules of Evidence are not applicable to a hearing to revoke pre-sentence release and that the Magistrate Judge did not err in revoking the Defendant's pre-sentence release. See Fed. R. Evid. 1101(d).

In accordance with Local Rule 72.1(E), the Magistrate Judge's Order will be set aside only if it is found to be clearly erroneous or contrary to law. The Court has carefully reviewed the record and finds that Magistrate Judge Miller reviewed the Petition for Revocation of Pre-Sentence Release in light of the existing statutes, rules, and case law. The Court further finds that the Magistrate Judge's decision was neither clearly erroneous nor contrary to law. Accordingly, the Court affirms Magistrate Judge Miller's Order of August 21, 2006, (Docket No. 120) and **DENIES** the Defendants' Appeal. (Docket No. 124).

IT IS SO ORDERED.

Dated this 15th day of September, 2006.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court